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Counsel for plaintiff Silgan Containers  
Corporation

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

SILGAN CONTAINERS CORPORATION

Plaintiff,

vs.

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA., and  
ZURICH AMERICAN INSURANCE  
COMPANY,

Defendants.

E-filing

Civil Action No.

**CV 08**  
COMPLAINT

**PJH**

**2246**

(For Breach of Insurance Contracts)

DEMAND FOR JURY TRIAL

*Parties*

1. Plaintiff Silgan Containers Corporation ("Silgan") is a Delaware corporation with its principal place of business in California.

2. Defendant National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") is a Pennsylvania corporation with its principal place of business in New York.

3. Defendant Zurich American Insurance Company ("Zurich") is an Illinois corporation with its principal place of business in Illinois.

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***Jurisdiction***

4. This court has jurisdiction under 28 U.S.C. § 1332(a)(1) because the action is between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

***Intradistrict Assignment***

5. Venue is proper in this court and division under 28 U.S.C. § 1391(a) and Civil Local Rule 3-2.

***Facts***

6. Defendant Zurich issued a Commercial General Liability Insurance Policy, number GLO 2984087-03, to Silgan with an effective date of November 1, 2003 and ending date of November 1, 2004 (the "Zurich policy").

7. Defendant National Union issued an Umbrella Liability Policy, number BE 2977893, to Silgan's parent company, Silgan Holdings Inc., for the period November 1, 2003 to November 1, 2004 (the "National Union umbrella policy").

8. The National Union umbrella policy also covers Silgan as a named insured.

9. During the period covered by both policies, Silgan received a claim from one of its customers, Del Monte Corporation ("Del Monte"), for damages and losses Del Monte had incurred during the period covered by the Zurich and National Union policies as a result of defective fruit cup cans (referred to as "4 oz EZO" cans) sold by Silgan to Del Monte (the "Del Monte fruit cup claim").

10. Del Monte's fruit cup claim was based on the fruit cup cans' tops not opening, which made the fruit product in the cans unusable.

11. Zurich has agreed to pay the Del Monte claim up to the \$1.5 million limit of the Zurich policy, subject to Silgan's deductible of \$250,000.

12. Zurich has taken the position that it will not actually pay the claim until National Union pays the amount covered by the National Union Umbrella policy and Del Monte executes a release.

1 13. By letter dated August 1, 2007, ESIS, Inc., Silgan's claim administrator for the claim,  
2 confirmed with Zurich that it accepted the Del Monte claim and agreed to pay to Silgan the policy  
3 limit of Zurich's policy in the amount of \$1.5 million, subject to Silgan's deductible under the  
4 policy of \$250,000.

5 14. National Union has refused to confirm coverage under the National Union umbrella  
6 policy for the Del Monte fruit cup claim.

7 15. National Union's failure to confirm coverage is wrongful and improper because the  
8 Del Monte fruit cup claim is plainly covered by the terms of the National Union umbrella policy.

9 16. The amount of the fruit cup claim submitted by Del Monte and accepted by Zurich is  
10 \$4,677,963.76. This loss Silgan incurred as a result of the Del Monte fruit cup claim has been  
11 finally determined for purposes of both the Zurich and the National Union umbrella policies.

12 17. The National Union umbrella policy is excess to the \$1.5 million of coverage for  
13 "Products/Completed Operations" under the Zurich policy, less a \$10,000 "Self Insured  
14 Retention" by Silgan.

15 18. Silgan has exhausted the limits of the Zurich policy for the Del Monte fruit cup claim.

16 19. The excess owed by National Union to Silgan for the Del Monte fruit cup claim under  
17 the National Union umbrella policy is \$3,177,963.70, less Silgan's \$10,000 "Self Insured  
18 Retention," for a net amount due and owing by National Union to Silgan of \$3,167,963.70.

19 20. National Union has had the Del Monte fruit cup claim for over three years.

20 21. National Union has had all the information necessary to accept and pay for the Del  
21 Monte fruit cup claim since August 2005, over two and a half years ago.

22 22. National Union has failed and refused to properly investigate the Del Monte fruit cup  
23 claim.

24 23. National Union has failed and refused to properly pay Silgan for the amounts National  
25 Union owes to Silgan under the National Union umbrella policy for the Del Monte fruit cup claim.

26 24. National Union has failed and refused to properly accept and consent to the payment  
27 of \$3,167,963.70 to Silgan to resolve the Del Monte fruit cup claim.

25. National Union has failed and refused to honor its duty of good faith and fair dealing to Silgan under the National Union umbrella policy.

26. Zurich has wrongfully and unreasonably delayed payment of the amount it owes to Silgan under the Zurich policy for the Del Monte fruit cup claim.

27. As a result of defendants' acts and omissions, Silgan has been required to retain counsel to assist it in requiring defendants to comply with their obligations under the Zurich and National Union umbrella policies.

***Count I***

### *Breach of Duty to Investigate*

28. Silgan repeats and incorporates the preceding allegations.

29. National Union has breached its duty to timely and properly investigate the Del Monte fruit cup claim.

***Count II***

### *Breach of Duty to Pay*

30. Silgan repeats and incorporates the preceding allegations.

31. National Union has breached its duty to pay Silgan the amount owed Silgan under the National Union umbrella policy for the Del Monte fruit cup claim.

***Count III***

### ***Breach of Duty of Good Faith and Fair Dealing***

32. Silgan repeats and incorporates the preceding allegations.

33. National Union has breached its duty of good faith and fair dealing under the National Union umbrella policy in connection with the Del Monte fruit cup claim.

***Count IV***

### ***Breach of California Insurance Code***

34. Silgan repeats and incorporates the preceding allegations.

35. National Union has violated §§ 790.03(h)(3), (4) and (5) of the California Insurance Code.

***Count V***

***Breach of Duty to Pay (Zurich)***

36. Silgan repeats and incorporates the preceding allegations.

37. Zurich has breached its duty to pay Silgan the amount owed Silgan under the Zurich policy for the Del Monte fruit cup claim.

***Count VI***

***Declaratory Judgment***

38. Silgan repeats and incorporates the preceding allegations.

39. There exists an actual controversy among the parties as to (a) National Union's duties and breach of its duties to Silgan under the terms of the National Union umbrella policy and (b) Zurich's duty to indemnify Silgan under the terms of the Silgan policy.

***Prayer for Relief***

40. Silgan therefore prays for a judgment against National Union and Zurich as follows:

- (a) awarding Silgan the sum of \$1.25 million against Zurich;
- (b) awarding Silgan the sum of \$3,167,963.70 against National Union;
- (c) awarding Silgan appropriate pre- and post-judgment interest on these amounts;
- (d) awarding Silgan as additional damages the attorney fees it has incurred in requiring National Union and Zurich to comply with the terms of the their respective policies;
- (e) declaring that National Union and Zurich are legally obligated to comply with the terms of their respective policies by paying Silgan the amounts owed to it for the Del Monte fruit cup claim;
- (f) awarding Silgan the costs incurred in this litigation; and
- (g) granting Silgan such additional relief as may be just under the circumstances.

April 30, 2008

Kieve Law Offices

By \_\_\_\_\_

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Facsimile: (415) 439-5377

Counsel for plaintiff Silgan Containers  
Corporation

***Jury Demand***

Plaintiff Silgan Containers Corporation demands a jury trial as to all issues triable to a  
jury.

\_\_\_\_\_  
Loren Kieve  
Counsel for plaintiff Silgan Containers  
Corporation



JS 44 (Rev. 12/07) (and rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

Silgan Containers Corporation

**DEFENDANTS**

National Union Fire Insurance Company of Pittsburgh, Pa., and Zurich American Insurance Company

(b) County of Residence of First Listed Plaintiff Los Angeles  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Loren Kieve (Bar. No. 56280)  
Kieve Law Offices  
50 California Street, Suite 1500  
San Francisco, California 94111

415 364-0060

E-filing

ADR

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332(a)(1)

Brief description of cause:

Suit for breach of insurance contracts

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 4,417,963CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

April 30, 2008

Loren Kieve

Court Name: U.S. District Court, NDCA  
Division: 3  
Receipt Number: 34611010663  
Cashier ID: almaceh  
Transaction Date: 04/30/2008  
Payer Name: LOREN KIEVE

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CIVIL FILING FEE

For: SILGAN  
Case/Party: D-CAN-3-08-CV-002246-001  
Amount: \$350.00

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CHECK

Check/Money Order Num: 5543  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

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PJH

Checks and drafts are accepted  
subject to collections and full  
credit will only be given when the  
check or draft has been accepted by  
the financial institution on which  
it was drawn.